

ZONING REFORM GROUP COMMERCIAL ZONES & USES

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A. BACKGROUND OF CURRENT ZONING PROVISIONS - COMMERCIAL DISTRICTS.

The current zoning provisions for commercial districts are Business (primarily 1 and 2, but there are a total of 1-5 and PMBDs or Planned Multi-Use Business Districts), Light Manufacturing, Manufacturing, and Mixed Use (1, 2). Most of these districts were either significantly modified or created in the 1987 re-codification, which was primarily a recodification as to commercial areas, and a reaction to what were perceived to be “bad” projects, i.e., 4 or 5 by-right Business zone projects in different parts of the City (Atrium Mall, so-called Antaramian Office Building at four corners, Mayflower Office Building and garage in West Newton, and Paragon Office Building on Needham Street). They were disliked most of all for size and exterior design, i.e., minimum style and maximum massing. In 1987, maximum allowable by-right dimensions were significantly reduced, e.g., by-right 6 story became 2-story. Some improvements in text and organization were added, such as tables. The creation of staged controls for differing business building sizes was introduced (i.e., by-right 0-9,999 gsf; site plan approval 10,000 – 19999 gsf; and special permit 20,000 gsf and up).

One key change to Business zones is that they no longer were cumulative, i.e., one could use land and buildings for everything by-right and by special permit which were in the more restrictive residential districts, plus the specified business uses in the Business zones. Except for housing above the first floor commercial uses and special permit multiple unit housing, all other housing essentially became nonconforming.

None of the newly created or modified commercial districts were tailored for local village centers. PMBDs were designed for very large parcels, typically not within a village business area, e.g., Riverside and former Omni site. Mixed 1 and Mixed 2 were an effort to deal with Needham Street, which prior to the 1987 recodification was zoned Manufacturing. and at that time was having an avalanche of retail and restaurants replacing manufacturing and R&D. The pre-1987 Manufacturing and Limited Manufacturing zone provisions allowed retail and restaurant.

The 1987 recodification hasn’t restored prior levels of manufacturing and R&D, and the gradual trend toward retail, restaurant and service uses continues. The basic economic reality is that Newton land is too valuable and pricey, and taxed at too high a level such that manufacturing and much of R&D are not financially viable. Instead, the Mixed 1 and 2 districts impose many levels of special permits, which limit the economic vitality and are slow and cumbersome, with the additional impact that developers and end-users (e.g., stores and restaurants) go to Needham and other bordering communities in which either the zoning is “by-right” or the special permit process is faster, or changing uses within the existing building is faster – or all three.

B. WHAT IS NEEDED

Consistent with the Comprehensive Plan, there needs to be focus on particular geographical areas in Newton, which may be suitable for R&D and light manufacturing of green technology products, and to create appropriate use districts and controls (e.g., dimensional and site plan regulations, and varying degrees of discretionary controls such as site plan approval as well as special permits). This may be an appropriate consideration for portions of Needham Street or in areas of Newton still zoned as “Manufacturing” or “Limited Manufacturing”.

None of the post 1987 provisions genuinely deal with the design and feel of the buildings, roadways, driveways, etc. so Needham Street has no visual identity and has the feel of a balkanized strip with a hodgepodge of buildings, setbacks and driveways. Whether Needham Street or some areas already containing “classic” malls along Route 9, adoption of innovative “Shopping Mall District” zoning which is flexible such that it encourages the feel of a shopping “village” off from the “main drag” should be investigated. Whether it be Mashpee Commons or Legacy Place, the use of private interior driveways as pseudo-secondary streets would serve as “frontage” for a multitude of detached buildings of various styles and sizes. There would be character to this “off-the main drag shopping village”. This can be achieved through form based zoning and the application of zero lot line development to achieve the village character.

This concept could help give a sense of character and identity to some of the large parcels off Needham Street. Needham Street could continue to serve as the primary feeder, but peripheral secondary feeders could ring the overall perimeter. Within the land bounded by Needham Street and the secondary feeders could be these private interior driveways on which front the “village” type buildings. Of course Needham Street has many developed parcels and where the developments have been successful, the proposed solution either might never take place or would take place after the passage of time when the existing building/infrastructure has grown stale and in need of replacement. Other areas of Needham Street which presently contain a hodgepodge of buildings and uses with high turnover might be more quickly available for such a concept. Note that the concept would require a far greater level of co-operation or consolidation as to the multiple lots with different owners – in the sense that the secondary peripheral feeders and interior driveways would need cross-easements and some common management and design sense.

On a simpler level, Needham Street needs even more interior shared driveways with cross-easements with the goal of removing a significant number of curbcuts. If the shopping village approach is deemed too late given multiple ownership and development of existing parcels, then at least the zoning provisions should change to encourage reversing the trend of parking areas along Needham Street with the buildings toward the rear. Buildings “up front” along the street with pleasant sidewalks, benches etc., would all give the Street some character, identity, and encourage both walking/walk-in trade (there are now significant amounts of residential buildings on and adjoining the Needham Street area which have not been tapped) and visual appeal for those driving along the Street.

Village business areas typically are Business 1 and Business 2 districts. Other than the ability of the Board of Aldermen to provide some limited parking waivers and allow an increase in stories, the Aldermen have not given themselves the powers to flexibly deal with the common issues in village centers, e.g., older buildings with often nonconforming heights, setbacks and other dimensional aspects; and with significant differences between the various business village centers. The villages typically have a mix in types and uses, and style and sizes of buildings. The zoning provisions do not contain powers and standards to preserve or enhance those features deemed important in a particular business block or entire business village.

Underlying all of the above historically has been a fear that if the Aldermen provide by-right flexibility or additional special permit powers aimed at flexibility, this will create unintended opportunities with potential negative consequences, most significantly expected to fall upon adjoining residential areas. This reflects fear and distrust for present and future Boards of Aldermen. **INSTEAD, THE UNDERLYING GOAL AND BASIS FOR THE CREATION/SELECTION OF TOOLS IN A REVAMPED ZONING ORDINANCE FOR COMMERCIAL ZONES IS “FLEXIBLE MODERATE GROWTH”. THIS IS ELUCIDATED IN MANY PARTS OF THE NEWTON COMPREHENSIVE PLAN AND IS SET FORTH THROUGHOUT THE ANALYSIS AND RECOMMENDATIONS IN THIS DOCUMENT.**

C. SUGGESTED SOLUTIONS FOR A RECODIFICATION OF COMMERCIAL ZONING PROVISIONS

1. simplify and speed up the process – both at staff levels and special permit levels so Newton does not lose desirable businesses to adjoining cities and towns which can and do act faster.
2. speed up and encourage parking waivers for restaurants, retail and certain office uses within village business centers and in general business areas so long as realistic assessment of impacts upon adjoining residential areas are taken into account,
[Although not part of the scope of the study, clearly one key aid would be construction of public or private garages along peripheral or satellite areas for village business centers so that off-street parking waivers for businesses within the village centers does not generate the reality or the fear of impact upon the adjoining residential areas, and this in turn can allow simpler and faster mechanisms to approve such uses.]
3. a realistic balance needs to be achieved as to a use’s or project’s contribution to traffic volumes in light of the underlying regional through traffic generated by the lack of adequate north-south roadways and transit facilities. The latter underlying traffic is not within Newton’s power to regulate, and so long as it exists, Newton needs to strike a better balance, a real balance, going forward with some projects with the understanding that the underlying through traffic should not be an automatic or absolute block to a proposed project.

4. PMBD's and overlay districts need to be created for and tailored to the different villages business centers. One size or type does not fit all since there is such diversity in the character of the many village centers.

5. set controls for business areas such that small and medium uses and buildings (to be defined) could go through Planning and any administrative site/use reviews and permitting in 60 days, exclusive of licensing (essentially a 30-45 day process plus 4-6 weeks at the state Alcoholic Beverages Control Commission-if applicable). Parking waivers which need Board of Aldermen approval adds 90-120 days at a minimum, so there needs to be a realistic assessment of what business areas (village center versus shopping mall versus Needham Street) need what type and amount of parking waivers and by what body. Smaller parking waivers in village business areas could be the purview of the Planning Board or Zoning Board of Appeals or a single zoning administrator. The small storefronts in the villages are particularly susceptible to the length of time and amount of pre-permit/permit dollars that must be expended. Too much of either or both discourages quality and innovative businesses and lead to short-term business uses which fail and which do not invigorate other businesses in the villages. The net result is landlords tend to go with what is by-right and safe, e.g., banks! Bland one-dimensional business areas are the result. Compare what Waltham did in revitalizing Moody Street with restaurants at the forefront. Waltham saw varied cuisines and restaurants as a way of bringing people back and frequenting stores in the area as well. A further note is that Waltham also created peripheral parking garages to help this revitalization.

6. The Board of Aldermen needs to decide that it is not always the best forum to issue approvals, that it should do what it does best as an elected body and focus most especially on projects which have broad impact and enhancement on and for the public and upon the community. The smaller projects and businesses which are most sensitive to time and the expense of the "process" need to be delineated and moved to other forums. Chapter 40A allows special permits to be issued by zoning boards of appeal, planning boards, and single zoning administrators. And it allows gradations of decisions – by right, site plan approval with restricted discretion and special permits. In using these different tools, the Board of Aldermen can fashion broad or very specific and tight standards to fit and avoid real, not feared impacts.

7. The Board of Aldermen and any other forum delegated with approval should also give itself the power to grant dimensional waivers for height, setbacks etc. so that if a commercial building is proposed for an already-developed business village or business area or along Needham Street, the special permit granting authority can also approve a building which fits into the exiting streetscape. And so if the buildings on both sides of the vacant lot or redevelopment lot have no setback on the street, or have party walls with no side setback or have small side setbacks.

The Aldermen have given themselves that power as to setbacks for attached dwellings and parking lots, and standards usually revolve around unique circumstances of building or land, and/or public benefit. There is no reason to limit such a powerful and flexible tool. And a variance is not the answer. No developer or business person would want to go through the special permit process and then face a zoning board of appeals for a variance, which is easily

appealable, and in 99% of cases cannot meet the “uniqueness” and “hardship” criteria of the state statute. The net result is quality developments and projects, large and small, are lost because of length of time, expense, and lack of flexible controls.

8. In the same vein as above, by-right “in-fill” buildings for village centers could be aided, and the “urban” character of the village centers preserved by having dimensional criteria such as the side and front setbacks can be the average of the side and front setbacks that the adjoining buildings on both sides have to the subject lot, and the height of the proposed building similarly determined. This gives flexibility and can prevent the unfortunate odd characteristic of one-story store fronts replacing three-story buildings giving the village centers no character whatsoever. In areas where there exists a village streetscape that setting can be maintained and encouraged. In some areas form base guidelines can be extrapolated and zero lot line criteria set to maintain the village streetscape.

9. Village Centers, especially those with significant public transit, need to return to what once was vibrant mixed use (commercial first floor and residential on the second and third floors. As recently as the 1980’s in Newton Centre, this was common and benefited the local business, suppressed increases in automobile traffic, and provided an alternative style of living for its residences in a suburban community. Converting apartments to offices in many of these mixed use buildings, and demolition of many as the buildings became “tired” ended the widespread use of the mixed-use building. While some zoning disincentives might be constructed to deter conversions, ultimately it is the vibrancy and economic profitability of the mixed use buildings in village centers which would provide an optimistic future for the village centers.

10. Waivers as to dimensional requirements along with specific exemptions are necessary for solar panels (“structures” according to the Zoning Board of Appeals past determinations of other stand-alone equipment – e.g., air conditioning pads), small roof-top mounted wind powered generators, etc. Similarly, waivers as to setbacks for buildings should be available so that aligning the building with the sun’s path to maximize solar panel efficiency should be available. Although there are exemptions in section 3 of chapter 40A, those exemptions are not complete.

11. Waivers or specific exemptions should be available for elevator and vertical lift devices and their machine rooms for handicapped accessibility. These are becoming more widely used in retrofitting commercial and residential buildings, especially where a ramp will not solve the access problem. But chapter 40A only exempts ramps from dimensional requirements!

12. De Minimis provisions such as now in section 30-21(c) for dimensionally nonconforming one and two family homes should be utilized for commercial zones as well. The availability of simple, inexpensive and sensible exemptions can mean the difference between a property owner spending the money to fix up a building or looking at the cost for multiple zoning approvals as well as the repair/improvement costs and letting the building remain in its present state, which attracts no or less desirable/less productive businesses.

13. Identify well-intentioned changes to zoning laws which on their face seem consistent with the Comprehensive Plan, but which have such a significant economic impact that they destroy or eliminate the very goal and have the further impact of deterring certain types of welcomed development. One such example is in the 2008 amendment for the inclusionary housing provisions in section 24(f). By requiring a significant contribution to the affordable housing fund for each new hotel unit, there has been absolutely no interest in new hotel development. That was a key reason for the withdrawal of a hotel component in the Chestnut Hill Square project. Hotels are “cash cows” – they do not impact the schools and are a favorable use as to concerns such as traffic impact and use of infrastructure. Most significantly, the hotel rooms tax goes to the city or town in which the hotel is located, and of course there are the property taxes from the development.

D. CONCLUSION:

Property taxes support the highly prized Newton Schools and the quality of life, which attract people to live in Newton. The tax rate allocated to commercial uses is twice that allocated to residential uses, and both contributes directly to the schools and infrastructure and keeps the residential property tax below what it otherwise would be. Permits for improvements and construction are significant and also support these goals. Room taxes for hotels go directly to the City’s coffers. Also these businesses provide jobs to residents of Newton!

Newton needs to keep its commercial areas vibrant and viable to continue this contribution. The commercial zones have been trapped by an overreaction in the 1987 so that there are less options, greater restrictions on commercial buildings as to use and size, and more hoops to jump through. Businesses which would otherwise be welcomed by Newtonites and by the dollars brought in while having no or minimal impact on the community rarely stick around when they can meet their risk tolerance level by going elsewhere!

Throughout this review of commercial zoning provisions as currently in force, and of the realities of the City of Newton, the most common thread is that realistic assessments of impacts generated by commercial uses is the first priority and should replace the more common visceral reaction which is fear of impacts, real or imagined. The second thread is the need to provide flexibility in the zoning scheme to allow for moderate commercial growth. The state Zoning Act allows cities and towns to adopt such flexibility and with it tools which can encourage desirable commercial uses. To work effectively these tools need to be in a zoning text which has clarity and consistency, which is relatively easy to use, and which tailors and uses the various gradations of discretion and delegation of authority to various boards and staff consistent with the significance of the project and its impacts upon the public welfare.

*****SEE NEXT PAGE FOR MATRIX OF PRINCIPALS AND GOALS*****

THE MATRIX:

PRINCIPLES	PLANNING GOALS
Speed	
Easy to use	
Predictable	
Internally consistent with comprehensive plan	
Produces result consistent with desired goal	
	Encourage walking - village centers
	Preserve & restore village center characters
	Encourage affordable and mixed income housing in and immediately adjoining village centers to support businesses and attract residents
	*Resolve tension between need to renew & rejuvenate businesses and underlying non-Newton through-traffic
	*Adapt criteria for uses and building sizes to minimize or avoid real impacts, not "feared" impacts for adjoining residential areas
	Foster sustainability of character and types of buildings and uses
	*balance encouragement of economic vitality & protection of adjoining residential areas from impact
Pick right tool for real problem	Flexibility of choices & gradations of approval process related to choices, e.g byright, site plan approval, special permit; & different approval bodies: zoning administrator, appointed board, Board of Aldermen
	Economic incentives, e.g., bigger floor area in return for aesthetic exterior with reduced bulk; or exterior compatible with adjoining buildings
	Encourage economic competitiveness viz. adjoining cities and towns
	Recognize need for PMBDs or Overlays for different village centers, and different large parcels to meet particular differences unique to an area or parcel

	Consider form based /zero lot line development areas for vibrant pedestrian village setting
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*related

Note: also discussed was the reality that Newton makes more difficult small changes for homeowner which changes may have no impact whatsoever, while some big changes in commercial districts can take place without assessing the actual impact. This issue directly impacts the development but more significantly the rejuvenation of residential areas and the level of real estate taxes and permit fees, which Newton tends to lose.